

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS  
AGAINST

CATHY I. ZOKAN, L.P.N.,  
RESPONDENT.

FINAL DECISION AND ORDER

Case No. LS0610272NUR

[Division of Enforcement Case No. 04 NUR 221]

PARTIES

The parties in this matter for purposes of Wis. Stat. § 227.53 are:

Complainant:  
Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Ave.  
Madison, WI 53708-8935

Respondent:  
Cathy Zokan  
3045 Cedar St, Apt 1  
Ephraim, WI 54211

Disciplinary Authority:  
Board of Nursing  
1400 East Washington Ave.  
Madison, WI 53703

PROCEDURAL HISTORY

This is a disciplinary action against Respondent Cathy I. Zokan, L.P.N. On October 27, 2006, a Complaint and Notice of Hearing was filed and served on the Respondent by certified and first class mail. The Respondent has failed to file an answer or other responsive pleading. The Complainant filed a Motion for Default on January 12, 2007. This Final Decision and Order is being issued based on the record and without a hearing.

FINDINGS OF FACT

1. Cathy I. Zokan, L.P.N., Respondent, date of birth December 29, 1958, is licensed by the Wisconsin Board of Nursing as a licensed practical nurse (LPN) in the state of Wisconsin pursuant to license number 31-31132, which was first granted November 22, 1991.
2. Respondent's address of record with the Department of Regulation and Licensing is 3045 Cedar St, Apt. 1, Ephraim, WI, 54211.
3. On or about August 2-3, 2004, Respondent was working a night shift at Hales Corners Care Center. Respondent had difficulty reading a report. At approximately 2:00 a.m., Respondent went to sleep in the medication room, leaving the nursing station open and the medication cart unlocked and neglecting patient care. When certified nursing assistants woke the respondent to provide patient care, her gait was unsteady.
4. Respondent underwent an alcohol and drug assessment. Respondent was diagnosed with poly-substance dependence, including alcohol, cocaine, cannabis and heroin.
5. On or about March 26, 2003, Respondent was charged with obtaining a prescription drug by fraud in violation of Wis. Stat. § 450.11(7)(a). On April 17, 2003, Respondent failed to appear in court and an arrest warrant was issued. On June 15, 2003, Respondent was taken into custody, and then released on a signature bond. On July 9, 2003, Respondent failed to appear in court and another warrant was issued. On October 1, 2003, Respondent pled guilty to obtaining a prescription drug by fraud, and was sentenced to four months in the House of Corrections (stayed) and eighteen months of

probation.

6. On or about June 16, 2003, Respondent was charged with possession of drug paraphernalia pursuant to Wis. Stat., § 961.573. Respondent failed to appear in court and an arrest warrant was issued. Respondent was arrested and bail was set. On October 1, 2003, the charges were dismissed but read in with the conviction in paragraph 5.

7. On or about August 23, 2004, Respondent was charged with operating while revoked in violation of Wis. Stat. § 343.44(1)(b), and released without bail. Respondent failed to appear for a status conference and a warrant was issued. Respondent was taken into custody, and subsequently released on a \$1,000 signature bond. Respondent failed to appear for her plea hearing and a second warrant was issued. Respondent was taken into custody again on August 8, 2006.

8. On or about October 1, 2005, Respondent pled guilty to forgery in violation of Wis. Stat. §. 943.38(1)(a class H felony). The criminal complaint indicates that Respondent was attempting to get money to buy cocaine. She was sentenced to six months in jail, stayed, and two years probation.

9. On October 27, 2006, the Department of Regulation and Licensing sent by certified and first class mail, the Complaint in this case. The Complaint was sent to Cathy I. Zokan's last address on file with the Department of Regulation and Licensing. The certified copy was returned to the Department on November 6, 2006, with the message that there was no such address. There was also a hand written note saying "gone".

10. The Department made subsequent attempts to serve Cathy Zokan with a copy of the complaint by sending it by certified and regular mail to two other addresses that were found as possible addresses on November 7, 2006. All four envelopes were returned to the Department. Two of the envelopes were returned with the message "Attempted – Not known", another said "unclaimed" and the fourth had two messages as to why the envelope could not be delivered.

11. The Department of Regulation and Licensing has not received an answer or any other correspondence from Cathy I. Zokan.

### **CONCLUSIONS OF LAW**

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter, pursuant to Wis. Stat. § 440.03 (1) and 441.07.

2. By failing to file an Answer as required by Wis. Admin. Code § RL 2.09, Respondent is in default under Wis. Admin. Code § RL 2.14, and the facts stated in the Complaint are admitted. Wis. Admin. Code § RL 2.09(3). Therefore the Board of Nursing may make findings and enter an order based solely on the facts in the Complaint.

3. Respondent, by engaging in the conduct set out in paragraph 3, above, engaged in conduct that failed to constitute basic nursing care, and which constituted a danger to the health, welfare or safety, of a patient, which is unprofessional conduct as defined by Wis. Admin. Code §§ N 6.04(1) (b) and 7.04(intro). Respondent therefore is subject to discipline pursuant to Wis. Stat. § 441.07(1) (d).

4. Respondent, by engaging in the conduct set out in paragraphs 3 and 5, above, engaged in conduct that showed that Cathy I. Zokan is unfit to be a licensed practical nurse because of her negligence and her abuse of alcohol and other drugs and, because her conduct constituted a danger to the health, welfare, or safety of her patients. Respondent is therefore subject to discipline pursuant to Wis. Stat. § 441.07(1)(c).

5. Respondent, by engaging in the conduct set out in paragraph 5, above, violated a law that substantially relates to the practice of nursing and is unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1). Respondent is therefore subject to discipline pursuant to Wis. Stat. § 441.07(1) (d).

6. The Respondent received proper notice of this action from the Department of Regulation and Licensing when

it mailed a copy of the Notice of Hearing and Complaint to the Respondent' last known address. Wis. Stats. § 440.11(1) and (2) and Wis. Admin Code § RL 2.08(1).

## ORDER

**THEREFORE, IT IS ORDERED** that the license of Respondent Cathy I. Zokan to practice as a Licensed Professional Nurse in the State of Wisconsin is **REVOKED**.

**IT IS FURTHER ORDERED** that Respondent Cathy I. Zokan pay the costs of this proceeding, as authorized by Wis. Stat. § 440.22 (2), Stats., and Wis. Admin. Code § RL 2.18, Wis. Admin. Code. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935  
Telephone (608) 267-3817  
Fax (608) 266-2264

**IT IS FURTHER ORDERED** that this Order is effective on the date of its signing.

## APPLICABLE LAW

**111.322 Discriminatory actions prohibited.** Subject to [ss. 111.33](#) to [111.36](#), it is an act of employment discrimination to do any of the following:

(1) To refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization membership any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment or labor organization membership because of any basis enumerated in [s. 111.321](#).

### **111.335 Arrest or conviction record; exceptions and special cases.**

(1) (c) Notwithstanding [s. 111.322](#), it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or

### **440.11 Change of name or address.**

(1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last-known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

### **441.07 Revocation.**

(1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under [s. 440.03 \(1\)](#), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse-midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under [s. 441.16](#), or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

(c) Acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetence.

(d) Misconduct or unprofessional conduct.

**RL 2.08 Service and filing of complaint, notice of hearing and other papers.**

(1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14(2), Stats. Service by mail is complete upon mailing.

**RL 2.09 Answer**

(1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

**RL 2.14 Default.** If the respondent fails to answer as required by [s. RL 2.09](#) or fails to appear at the hearing at the time fixed therefore, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

**N 6.04 Standards of practice for licensed practical nurses.**(1) Performance of acts in basic patient situations, the L.P.N. shall, under the general supervision of an R.N. or the direction of a physician, podiatrist, dentist or optometrist:  
(b) provide basic nursing care;

**N 7.04 Misconduct or unprofessional conduct.** As used in s. 441.07(1)(d), Stats., “misconduct or unprofessional conduct” means any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. “Misconduct or unprofessional conduct” includes, but is not limited to, the following:

(1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. ....;

(2) Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law;

**OPINION**

The question presented in this case is whether discipline should be imposed on Cathy I. Zokan, LPN, and if yes, what kind of discipline. It is the opinion of this administrative law judge that revocation of Ms. Zokan’s license is needed to protect her patients and the public.

It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969).

The state's purpose in licensing professionals is to protect its citizens. *Strigenz*, 103 Wis.2d at 286, 307 N.W.2d at 667. License revocation is the ultimate means of protecting the public short of fining or imprisonment. *Strigenz v. Department of Regulation and Licensing*, 103 Wis.2d 281, 287, 307 N.W.2d 664 (1981)

On or about August 2-3, 2004, while working at the Hales Corners Care Center, Cathy I. Zokan went to sleep in the medication room at approximately 2:00 a.m. and left the nursing station open and the medication cart unlocked. When an LPN is assigned to be on duty at a nursing station, especially at 2:00 a.m., it is for the purpose of monitoring and taking care of patients. While she was asleep in the medication room there was no one at the nursing station to take care of the patients for standard needs or in case of an emergency. The evidence of the unsteady gait when being awakened suggests that Ms. Zokan was incompetent to perform her duties, even if she had been at the station. Her action in leaving the medication cart unlocked while she slept allowed the possibility that a patient would take medication that would be harmful to him or her. Ms. Zokan's actions created a dangerous situation for the health, safety and welfare of her patients.

Ms. Zokan was convicted of obtaining a prescription by fraud on October 1, 2003 Obtaining a prescription by fraud is substantially related to the practice of an LPN because an LPN has access to drugs and distributes drugs as part of the job. In Ms. Zokan's case the connection is especially strong because she has been diagnosed as having a substance abuse problem. As an LPN Ms. Zokan would have access to drugs and her job would therefore enable her to obtain and take drugs while at work. That would create a hazardous situation for her patients. Allowing Ms. Zokan to continue to practice as an LPN and therefore have access to drugs would endanger the health and safety of her patients.

The record in this case shows that Ms. Zokan is unreliable and does not meet her legal obligations. Ms. Zokan's history of convictions, arrests and missed appearances in the court system shows that she does not fulfill her responsibilities and that the problem continues based on her failure to appear in court in 2006. As an LPN Ms Zokan is responsible for the health and safety of her patients and must be reliable and trustworthy. Patients need and rely upon having a nurse who is competent and sober upon whom they rely for their care and safety. Ms. Zokan has shown that she cannot be entrusted with that responsibility and if allowed to continue as an LPN she would be put her patients at risk of harm.

Wisconsin law provides that it is illegal discrimination to take disciplinary actions based on conviction records, with specific exceptions. One exception is that you may take disciplinary action based on such records if the circumstances of the job substantially relate to the circumstances of the crimes for which the individual was convicted. As shown above, the circumstances of Ms. Zokan's convictions are substantially related to an LPN's job. Discipline may therefore be imposed upon Ms. Zokan based on her conviction record.

The practice of professional nursing involves a unique combination of duties and patient trust. The facts in this case establish that Ms. Zokan violated both her duties and the trust of her patients. Her actions ranged from sleeping on the job and leaving a medical cart unlocked, thereby abandoning patient care and putting her patients in danger, to obtaining drugs by fraud. Protection of the public requires that those who engage in the nursing profession behave in a manner consistent with that vocation. Ms. Zokan's actions were not consistent with the vocation of nursing.

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on the respondent or that she is even interested in being rehabilitated. The conduct proven demonstrates an indifference to the health, safety and welfare of patients. The failure of the respondent to answer or otherwise participate in this proceeding indicates that less severe avenues that rely upon Ms. Zokan's participation and cooperation will not be useful. Considering her lack of cooperation thus far as an indication of future action, it is unlikely that the respondent will

actively engage in other rehabilitative options.

Imposing any discipline less severe than revocation in this circumstance would also wrongly signal others that engaging in similar conduct would not result in a serious consequence, and therefore lack any deterrent to this type of conduct. Revocation will act to safeguard the public and deter such conduct by other practitioners.

### COSTS

Section 440.22 (2), Stats, provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board of Nursing, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs.

The ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, the Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

STATE OF WISCONSIN  
BOARD OF NURSING

Marilyn Kaufmann, RN, PhD  
Chair

8/31/07